

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1703 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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TULSIBHAI SOMABHAI PARMAR

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1999

ORAL JUDGEMENT

1. The petitioner is a detenu who has been detained under the PASA by virtue of an order passed by the Commissioner of Police, Ahmedabad city, Ahmedabad, dated 5th March 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short `the PASA Act'].

2. The detaining authority considered three

registered offences against the petitioner besides the statement of two witnesses in respect of unregistered offences and recorded a subjective satisfaction about the petitioner being a dangerous person and about the need for exercise of privilege in exercise of powers u/s 9[2] of the PASA Act. The detaining authority, after considering the possibility of resorting to less drastic remedy, came to conclusion that it was necessary to detain the petitioner immediately from continuing his illegal and anti social activities and therefore, it is necessary to detain him under the PASA Act.

3. The petitioner has challenged the order of detention by this petition under Article 226 of the Constitution of India, mainly on the ground that there is non-application of mind on part of the detaining authority while exercising power u/s 9[2] of the PASA Act of claiming privilege. There was no sufficient time between the verification of the statements of anonymous witnesses and the passing of the order which could have reasonably possibilized for the authorities to arrive at subjective satisfaction after due formalities and the detention order, therefore, is bad in law. The petition therefore may be allowed and the petitioner may be set at liberty forthwith.

4. The respondents are served and they appeared through learned AGP Mr. D.P.Joshi. No reply is filed.

5. Ms. Banna Datta, learned advocate appearing for the petitioner has restricted her arguments to the above ground and tried to emphasize that the order is bad. She submitted that the petitioner was bailed out on 3rd March 1999, in the last offence registered vide Sabarmati police station Cr.R. No. 56/99. The statements of witnesses were recorded on that very day. They are allegedly verified by the detaining authority on 5th March 1999 and the order came to be passed by the detaining authority on 5th March 1999 itself. She submitted that the order reflects mechanical exercise of powers without application of mind.

6. Mr.Joshi, learned AGP has opposed this petition strongly.

7. The petition deserves to be allowed on the ground emphasized by the learned advocate for the petitioner. It is not disputed that the statements of witness were recorded on 3/3/99. The statements came to be verified by the detaining authority on 5/3/99 and the order of detention came to be passed on 5/3/99 itself. While

passing the order, the detaining authority recorded a subjective satisfaction about the correctness and genuineness of the statements of the witnesses in respect of the incidents narrated by the witnesses as well as fear expressed by the witnesses. The authority therefore having been satisfied about the genuineness of the fear expressed by the witnesses exercised the powers u/s 9[2] of the PASA Act and claimed privilege of not disclosing the identity of these witnesses.

8. In the opinion of this court, there was no time lag between the verification and the passing of the order which could have reasonably possibalized for the authority to do the exercise of ascertaining the correctness and genuineness of the fear expressed by the witnesses. The privilege u/s 9[2] is not expected to be exercised in a mechanical manner. Some independent exercise is required to be carried out by the detaining authority before exercising powers u/s 9[2] of the PASA Act, because this exercise of powers deprives the detenue of making an effective representation which is a right guaranteed by the Constitution of India. This is not a mere empty formality. In addition to interrogating the witnesses, it would be reasonable to expect of such authority before exercise of powers u/s 9[2] to cross check the happening of incidents stated by the witnesses as well as fear expressed by the witnesses. Simple interrogation of witnesses is no verification expected of the detaining authority while exercising powers u/s 9[2] of the PASA Act. As the authority has to ascertain before exercising these powers, that this exercise of power is necessary in the public interest and therefore, if the statements are verified on the same day, on which the order is passed, there is no time lag sufficient enough for the authority to cross check the statements of the witnesses and then to arrive at a subjective satisfaction about the need for exercise of powers u/s 9[2] of the PASA Act in public interest. The powers are to be exercised with a serious consideration to the fact that it has a bearing not only on public interest, but also on the right of a detenue of making an effective representation guaranteed by the Constitution of India. There has to be some contemporaneous material before the detaining authority, apart from the statements of witnesses, to ascertain the correctness and genuineness of incidents narrated by the witnesses and the fear expressed by witnesses qua the detenue. Decision in the case of Chandrakant N. Patel v/s State of Gujarat [1994 [1] GLR 761] may be profitably referred to in this regard.

9. It is therefore found in the instant case that there was no time lag sufficient enough to provide room for the detaining authority to verify the correctness and genuineness of the statements made by the anonymous witnesses regarding the incidents as well as fear expressed by them qua the petitioner and therefore, the exercise of powers u/s 9[2] of the PASA Act does not seem to be genuine. This has infringed the right of the detainee of making an effective representation. This would vitiate the order of detention and this would in itself be sufficient ground for quashing and setting aside the order.

10. In this regard, the decision in the case of Kalidas Chandulal Kahar v/s State of Gujarat as reported in 1993 [2] GLR 1659, may be profitably referred to.

10. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad dated 5th March 1999, in respect of the petitioner Tulsibhai Somabhai Parmar, is hereby set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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